

APPENDIX

APPELLATE AND PUBLISHED DECISIONS

American States Ins. Co. v. Kiger, 662 N.E.2d 945 (Ind. 1996) reh=g denied (Asudden and accidental@ pollution exclusion in CGL policy does not bar coverage for gradual gasoline release because Asudden@ reasonably can be construed to mean Aunexpected@; absolute pollution exclusion in CGL policy also does not bar coverage because it does not specifically exclude gasoline and is so broad that to construe it literally would produce absurd results).

Seymour Manufacturing v. Commercial Union, 665 N.E.2d 891 (Ind. 1996) (reaffirms Kiger and grants summary judgment on obligation to defend even where insurer has evidence to support coverage defense).

Allstate Ins. Co. v. Dana Corp., 737 N.E.2d 1177 (Ind. Ct. App. 2000), trans. granted (an insurer must pay Aall sums@ for which a policyholder is liable whenever it is shown that property damage or personal injury has occurred, in whole or in part, during that insurer=s policy period; groundwater beneath a property owner is not Aowned@ until it is extracted by the property owner for use).

Employers Ins. of Wausau v. Recticel Foam Corp., 716 N.E.2d 1015 (Ind. Ct. App. 1999) (insurer breached its duty to defend under non-waiver agreement; policies governed by Indiana law and Indiana is proper forum where company headquartered in Indiana faced liability for out of state cleanup).

Travelers Indem. Co. v. Summit Corp. of America, 715 N.E.2d 926 (Ind. Ct. App. 1999) (environmental liabilities are covered under Apersonal injury@ part of CGL policy and are not subject to any pollution exclusion; policies governed by Indiana law where greatest number of cleanup sites located in state).

Governmental Interinsurance Exchange v. City of Angola, 8 F.Supp.2d 1120 (N.D. Ind. 1998) (insurer must pay for cleanup of petroleum contamination because absolute pollution exclusion does not bar underground storage tank claims).

Hartford Accident & Idem. Co. v. Dana Corp., 690 N.E.2d 285 (Ind. Ct. App. 1997), trans denied, (1998) (environmental cleanup costs are covered Adamages@ under CGL policy; environmental administrative proceeding is a Asuit@ under provision requiring insurer to defend Asuits seeking damages@; Asuit@ broad enough to include, among other things, CERCLA requests for information, unilateral orders, orders to respond to contamination and PRP letters).

Freidline v. Shelby, 739 N.E.2d 179 (Ind. Ct. App. 2000), trans granted (insurer commits bad faith as a matter of law in relying on defense found invalid in Kiger).

(Asudden and accidental@) pollution exclusion in CGL policy must be construed to mean Aunexpected and unintended@ environmental liabilities are covered under Apersonal injury@ partof CGL policy).

General Housewares Corporation v. National Surety Corporation, 741 N.E.2d 408 (Ind. Ct. App. 2000) (for claim to be excluded as Aknown loss@, policyholder must have been Asubstantially certain@ liability would be imposed at time purchased policy).

SELECTED TRIAL COURT DECISIONS

EMI Co. v. Royal Ins. Co., et al, Cause No. 49D06-9811-CP-1550 (Marion Superior Court, August 22, 2000) (absolute pollution exclusion in CGL policy does not bar coverage for claim involving improper handling of PCB oil).

Henschen Oil, Inc. v. Burris Equipment Co., Inc., Cause No. 20C01-9805-CT-036 (Elkhart Cir.Ct. June 15, 2000) (absolute pollution exclusion in CGL policy is ambiguous and thus does not bar coverage for claim involving a gasoline release).

EMI Co. v. Royal Ins. Co., et al, Cause No. 49D06-9811-CP-1550 (Marion Superior Court, May 30, 2000) (first party policy covers PCB cleanup costs under its Adebris removal@ and APCB >Pollutant= Cleanup and Removal@ provisions).

Reliance Ins. Co. of Illinois v. Raybestos Products Co., Cause No. IP97-0027-C-Y/G (U.S. District Court, Southern District of Indiana, January 19, 2000) (absolute pollution exclusion in CGL policy is ambiguous and unenforceable as a matter of law and Apersonal injury@ provisions provide alternative means to cover PCB liability claim).

General Housewares Corp. and Chicago Cutlery, Inc. v. CNA Ins. Co., et al, Cause No. 49D06-9706-CP-920 (Marion County Superior Court, January 6, 2000) (absolute pollution exclusion in CGL policy does not bar coverage for claims involving environmental contamination at owned and non-owned sites, and cleanup costs are covered Adamages@).

Contractors United, Inc. v. Commercial Union Ins. Co., Inc., Cause No. 49C01-9406-CP-2003 (Marion Circuit Court, October 27, 1999) (policyholder is entitled to coverage for Superfund claims even though insurers claimed first notice came years after policyholder had received initial notices of potential responsibility from USEPA).

Crown Int=l, Inc. v. Great N. Ins. Co., Cause No. 49D12-9704-CP-522 (Marion Superior Court, March 13, 1998) (absolute pollution exclusion in first party policy does not bar coverage for damage to electronic equipment by muriatic acid flumes).

Sam Winer & Co., Inc. v. Commercial Union Ins. Co., Inc., Cause No. 20D01-9207-CP-347 (Elkhart Superior Court, February 18, 1994) (Asuit@ includes administrative actions under

CERCLA. Court grants summary judgment in favor of policyholder on duty to defend).

Lear Corporation v. Century Indemnity, et al, Cause No. 49D10-9805-CP-000729 (December 22, 2000) (primary carriers required as a matter of law to pay defense costs even where assert late notice and other defenses, and defense obligation includes work involving policyholder=s entry of sites into Indiana Voluntary Remediation Program).